

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Hani Burni,

Civil No. 06-5046 (PAM/JSM)

Plaintiff,

v.

ORDER

Denise Frazier, District Director,
United States Citizenship and
Immigration Services ("USCIS");
Emilio T. Gonzalez, Director, USCIS;
and Robert Mueller, Director, Federal
Bureau of Investigation,

Defendants.

This matter is before the Court on the Report and Recommendation ("R&R") of Magistrate Judge Janie S. Mayeron dated February 14, 2008. In the R&R, Magistrate Judge Mayeron recommended that this Court deny Defendants' Motion to Dismiss.

Defendants have filed a one-page objection to the R&R, contending that the Magistrate Judge erred by failing to distinguish between Defendant Mueller and the USCIS Defendants. Defendants apparently do not otherwise take issue with the R&R's conclusion that this Court has subject matter jurisdiction over Plaintiff's challenge to the inordinate delay in ruling on his adjustment-of-status application.

Defendants may be correct that Defendant Mueller cannot grant (or deny) Plaintiff the relief he seeks. However, a review of the papers filed in this matter reveals that Defendants failed to raise this argument before the Magistrate Judge. Thus, it is disingenuous to claim that the Magistrate Judge erred on this point. By neglecting to make this argument,

Defendants have waived it, at least for the purposes of the Motion to Dismiss.

Accordingly, **IT IS HEREBY ORDERED** that:

1. The Report and Recommendation (Docket No. 17) is **ADOPTED**; and
2. Defendants' Motion to Dismiss (Docket No. 5) is **DENIED**.

Dated: March 4, 2008

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge